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| 09/748,529      | 12/22/2000  | M. Stephen Galland   | 2039.006200/RFE     | 4199             |

23720 7590 04/30/2003

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EXAMINER

ANTHONY, JOSEPH DAVID

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1714

DATE MAILED: 04/30/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/748,529

Applicant(s)

GALLAND ET AL.

Examiner

Joseph D. Anthony

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

### DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodgers et al. U.S. Patent Number 6,517,776 or Cai et al. U.S. Patent Number 6,527,976 or Jerdee et al. U.S. Patent Number 6,333,087.

Rodgers et al. discloses UV/heat oxygen scavenging initiation in angular preformed packaging articles. The articles comprise an oxygen scavenging polymeric layer which can be a polymer having an ethylenic backbone and cyclic olefinic pendent group(s), see column 8, line 33 to column 9, line 44. Transition metal catalyst, barrier layer(s), photoinitiators, diluent layers etc. are all directly disclosed. The preferred method of initiating oxygen scavenging and sterilizing the article is by wetting the interior surface of the article with an aqueous hydrogen peroxide solution, drying the surface by removing the water, and exposing the "wetted" interior surface to UV/heat to initiate oxygen scavenging, see column 15, line 55 to column 16, line 64.

Cai et al. discloses oxygen scavenging compositions/articles. The articles comprise an oxygen scavenging polymeric layer which can be a polymer having an ethylenic backbone and cyclic olefinic pendent group(s), see column 4, line 36 to column 7, line 18. Transition metal catalyst, barrier layer(s), photoinitiators, diluent layers etc. are all directly disclosed. The oxygen scavenging polymer may be initiated

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by UV radiation, heat or microwaves, see column 16, lines 11-59. When microwaves are used, it is preferable that a microwave reactive material be first applied to the surface of the oxygen scavenging composition/layer. A preferred such material is hydrogen peroxide solutions, see column 16, line 60 to column 17, line 22.

Jerdee et al. discloses UV/heat oxygen scavenging initiation in preformed packaging articles. The articles comprise an oxygen scavenging polymeric layer which can be a polymer having an ethylenic backbone and cyclic olefinic pendent group(s), see column 4 line 38 to column 5, line 15, and column 7, lines 22-51. Transition metal catalyst, barrier layer(s), photoinitiators, diluent layers etc. are all directly disclosed. Aseptic packaging conditions are preferably used. The preferred aseptic packaging method is to sterilize the article by wetting the interior surface of the article with an aqueous hydrogen peroxide solution, drying the surface by heat or UV radiation, to remove the water, and exposing the "wetted" sterilized interior surface to UV/heat to initiate oxygen scavenging, see column 9, lines 14-27.

Rodgers et al., Cai et al., and Jerdee et al have been described above. They all differ from applicant's claimed invention in that there is no direct teaching (i.e. by way of an example) to where the interior surface of the packaging article is actually treated with a hydrogen peroxide solution followed by exposure to an initiation factor, e.g. UV radiation, heat, microwaves etc..

It would have been obvious to one having ordinary skill in the art to use the disclosure of each patent individually as motivation to actually wet the interior surface of the oxygen scavenging packaging article with a hydrogen peroxide solution followed by

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exposure of the interior surface to an initiation factor, e.g. UV radiation, heat, microwaves etc. since such a method is directly suggested by each patent.

### ***Claim Objections***

3. Claim 11 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 11 requires the wetted surface to be the interior surface. This is not further limiting because independent claim 1 requires that the wetted surface is to be the interior surface.

### ***Prior-Art Cited But Not Applied***

4. Any prior-art reference which is cited on FORM PTO-892 but not applied, is cited only to show the general state of the prior-art at the time of applicant's invention.

### ***Examiner Information***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Joseph D. Anthony whose telephone number is (703) 308-0446. This examiner can normally be reached on Monday through Thursday from 7:35 a.m. to 6:00 p.m. in the eastern time zone. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (703) 306-2777. The group (**non-after final**) FAX machine number is (703)

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872-9310. The group **(after final)** FAX machine number is (703) 872-9311. Unofficial correspondence transmitted by FAX must be marked "DRAFT". All other papers received by FAX will be treated as Official communications and cannot be immediately handled by the Examiner. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0651. The receptionist is located on the 8<sup>th</sup> floor of Crystal Plaza 3 (e.g. CP-3) and will be the welcome point for all visitors to the building.



**Joseph D. Anthony**  
**Primary Patent Examiner**  
**Art Unit 1714**

4/28/03